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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

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Bankruptcy Case
No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**DEBTORS' AND SHAREHOLDER
PROONENTS' JOINT RESPONSE TO
THE OFFICIAL COMMITTEE OF
TORT CLAIMANTS' AMENDED
LIMITED OBJECTION TO THE BUTTE
SETTLEMENT**

Date: April 14, 2020
Time: 10:00 a.m. (Pacific Time)
Place: Telephonic Hearing

Re: Docket Nos. 6418 and 6713

1 PG&E Corporation (“PG&E”) and Pacific Gas and Electric Company, as debtors and
2 debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases, and
3 certain funds and accounts managed or advised by Abrams Capital Management, LP, and certain
4 funds and accounts managed or advised by Knighthood Capital Management, LLC (collectively,
5 the “Shareholder Proponents”), each as Plan Proponents and parties to the Tort Claimants RSA,
6 respond to the *Amended Limited Objection And Reservation Of Rights* [Docket No. 6713] (the
7 “Objection”) filed by the Official Committee of Tort Claimants (the “TCC”) with respect to the
8 *Motion Of Debtors Pursuant To 11 U.S.C. §§ 105 (a) and 363(b) And Fed. R. Bankr. P. Rule*
9 *9019 For Entry Of An Order Approving (I) Agreement And Settlement With People Of The State*
10 *Of California And (II) Granting Related Relief* [Docket No. 6418] (the “Motion”).¹

11 BACKGROUND

12 The Motion establishes that the Butte County Agreement will “resolve the criminal
13 investigation in a manner that will bring certainty and closure and, at the same time, not
14 jeopardize confirmation and implementation of the[] Plan that will expedite distributions of the
15 approximate \$13.5 billion of value to be made available to compensate fire victims.” Motion at 4.
16 There is universal consensus on this point. Not a single stakeholder has asserted otherwise.

17 The Butte County Agreement provides, among other things, for PG&E to pay fines,
18 penalties and assessments of approximately \$4 million. Motion at 5-6. As demonstrated below,
19 those are unequivocally “Fire Victim Claims” payable from the Fire Victim Trust under the plain
20 terms of the Plan and the Tort Claimants RSA to which the TCC is a signatory. Nevertheless, in
21 order to ensure that the Fire Victim Trust is not reduced by those relatively *de minimis* sums, the
22 Debtors have arranged for the amount of fines, penalties and assessments to be funded to the Fire
23 Victim Trust with interest earned on the distribution to be transferred to the Subrogation Wildfire
24 Trust pursuant to the Plan. As a consequence, **the amounts payable under the Butte County**
25 **Agreement will not deplete the Fire Victim Trust or impact Fire Victim Claims at all.**

26
27 ¹ Capitalized terms not defined here have the meanings given in the Motion and the *Debtors’*
28 *And Shareholder Proponents’ Joint Chapter 11 Plan Of Reorganization Dated March 16,*
2020 [Docket No. 6320] (the “Plan”).

1 Proving that no good deed goes unpunished, the TCC – whose constituency has the most
2 to gain from resolution of the Butte County criminal proceedings and the most to lose from an
3 ongoing prosecution that would endanger the Debtors’ emergence from chapter 11 within the
4 time required by AB 1054 – has lodged a disingenuous “limited objection” to the Motion. The
5 TCC bizarrely claims that the Debtors’ arrangement to have the Butte County fines, penalties and
6 assessments funded in a manner that does not diminish the Fire Victim Trust “is an intentional
7 move to receive an improper advisory opinion from the Court that the definition of ‘Fire Claim’
8 in the TCC RSA, and the definition of ‘Fire Victim Claims’ in the Plan, includes criminal fines
9 and penalties.” Objection at 2. The Plan Proponents are neither that clever nor that sinister. As
10 shown below, they have arranged a way for a claim clearly and unequivocally payable from the
11 Fire Victim Trust, as expressly agreed by the TCC, to be funded from another source. Nothing
12 more, nothing less.

13 The TCC’s Objection is yet one more blatant, misguided and, unfortunately, no longer
14 astonishing effort to avoid the clear terms of the Court-approved settlement agreement the TCC
15 negotiated and executed. This chronic behavior at one point was curious. Now, however, it has
16 risen to an absurd and dangerous level, as the TCC is squandering estate assets to the detriment
17 and prejudice of all stakeholders who must finance and bear the risk of this conduct. Enough is
18 enough.

19 **RESPONSE**

20 The TCC’s remarkable pleading is wrong for two reasons. First, the Debtors are not
21 seeking any “advisory opinion.” Second, criminal fines and penalties clearly and unambiguously
22 *are* “Fire Victim Claims” payable from the Fire Victim Trust under the Plan and the Tort
23 Claimants RSA. The TCC’s convoluted argument to the contrary once again conflicts with the
24 plain language of the Tort Claimants RSA it voluntarily executed and attempts to rewrite the
25 history of these Chapter 11 Cases. The TCC’s Objection should be seen for what it is – yet
26 another baseless effort to have the Court relieve the TCC from its persistent disregard of binding
27 contractual commitments under the Tort Claimants RSA that were approved by the Court and
28 remain in full force and effect.

1 **1.** The Motion does not request an “advisory opinion.” The proposed Order
2 approving the Motion provides for the Court to authorize the Debtors “to enter into and perform
3 under the Butte County Agreement.” It says nothing about the source of payment for the fines,
4 penalties and assessments provided for in the Butte County Agreement, and it does not provide
5 any interpretation of terms of the Plan or the Tort Claimants RSA.

6 The TCC remarkably claims that “PG&E’s solution [of using interest on the distribution
7 to be made to the Subrogation Wildfire Trust] is an artifice used only to establish a precedent that
8 criminal fines may be paid from the Fire Victim Trust.” Objection at 3. There was and is no such
9 intention and, of course, no evidence of the same. As demonstrated below, under the express
10 terms of the Tort Claimants RSA and the Plan that embodies it, the \$4 million payable under the
11 Butte County Agreement is a Fire Victim Claim to be satisfied by the Fire Victim Trust.
12 Nevertheless, to avoid this result and benefit all of the holders of Fire Victim Claims, the Debtors
13 arranged to have an additional \$4 million funded to the Fire Victim Trust from the interest earned
14 on the distribution to be made to the Subrogation Wildfire Trust.

15 Additionally, as the TCC well knows, the Debtors would jeopardize critical Plan financing
16 commitments if they simply paid the \$4 million themselves. Those commitments are subject to
17 termination if the Debtors’ aggregate liability with respect to Fire Claims exceeds \$25.5 billion,
18 which would occur if the Debtors had agreed to fund the \$4 million directly. Termination of the
19 financing commitments could jeopardize the Plan, delay payments to Fire Claimants and other
20 stakeholders, and imperil the June 30, 2020 AB 1054 deadline.

21 As a consequence, the Debtors negotiated the arrangement by which the fines, penalties
22 and assessments in the Butte County Agreement would be funded with interest earned on
23 distributions to be made in respect of Subrogation Wildfire Claims. This is no “artifice.” It is an
24 invaluable way to preserve the Plan financing, maintain the corpus of the \$13.5 billion funding
25 for the Fire Victim Trust for the benefit of Fire Victim Claims, and keep confirmation on
26 schedule.

1 2. Further, the TCC is wrong that criminal fines, penalties and assessments are not
2 “Fire Victim Claims” within the meaning of the Plan and the Tort Claimants RSA that it
3 negotiated.

4 A “*Fire Victim Claim*” under the Plan is “any Fire Claim that is not a Public Entities
5 Wildfire Claim, Subrogation Wildfire Claim, or a Subrogation Butte Fire Claim.” Plan § 1.79.
6 The Tort Claimants RSA provides a substantively identical definition. Tort Claimants RSA,
7 Ex. A at 3.

8 The Plan and Tort Claimants RSA in turn define “*Fire Claim*” as follows:

9 **[A]ny Claim against the Debtors in any way arising out of the Fires,**
10 **including, but not limited to,** any Claim resulting from the Fires for (a)
11 general and/or specific damages, including any Claim for personal injury,
12 wrongful death, emotional distress and similar claims, pavement fatigue,
13 damage to culverts, ecosystem service losses, municipal budget
14 adjustments/reallocation, lost revenue and tax impacts, local share of
15 reimbursed fire clean-up costs, future estimated infrastructure costs, water
16 service losses, lost landfill capacity, costs related to unmet housing (e.g.,
17 housing market impact due to the Fires and adjustments for increased
18 homeless population), and/or hazard mitigation costs (including,
19 watershed restoration and hazardous tree removal expenses); (b) damages
20 for repair, depreciation and/or replacement of damaged, destroyed, and/or
21 lost personal and/or real property; (c) damages for loss of the use, benefit,
22 goodwill, and enjoyment of real and/or personal property; (d) damages for
23 loss of wages, earning capacity and/or business profits and/or any related
24 displacement expenses; (e) economic losses; (f) damages for wrongful
25 injuries to timber, trees, or underwood under California Civil Code
26 § 3346; (g) damages for injuries to trees under California Code of Civil
27 Procedure § 733; (h) punitive and exemplary damages under California
28 Civil Code §§ 733 and 3294, California Public Utilities Code § 2106, or
 otherwise, (i) restitution; (j) **fines or penalties**; (k) any and all costs of
 suit, including all attorneys’ fees and expenses, expert fees, and related
 costs, including all attorneys and other fees under any theory of inverse
 condemnation; (l) for prejudgment and/or postpetition interest; (m) other
 litigation costs stemming from the Fires; and (n) declaratory and/or
 injunctive relief. For avoidance of doubt and without prejudice to the
 Debtors’ right to object to any such Claim, “Fire Claim” shall not include
 any (x) Claim for substantial contribution under section 503(b) of the
 Bankruptcy Code, (y) Subordinated Debt Claim, HoldCo Common
 Interest or HoldCo Rescission or Damage Claim, or (z) Ghost Ship Fire
 Claim. The Fire Claims shall not include claims arising from any fire
 other than the Fires (including, without limitation, the Kincade Fire or any
 postpetition fire) or any Administrative Expense Claims.

1 Plan § 1.78 (emphasis added); *see* Tort Claimants RSA, Ex. A at 2-3. The Plan and Tort
2 Claimants RSA define “*Claim*” to have “the meaning set forth in section 101(5) of the
3 Bankruptcy Code.” Plan § 1.26.²

4 Under the plain language of these documents, “fines and penalties” “in any way arising
5 out of the Fires” are “Fire Claims” if the fines and penalties constitute “claims” within the
6 meaning of section 101(5) of the Bankruptcy Code. Section 101(5) provides that a “claim” is any
7 “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated,
8 fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or
9 unsecured.” 11 U.S.C. § 101(5). “Congress intended by this language to adopt the broadest
10 available definition of ‘claim.’” *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991); 2 COLLIER
11 ON BANKRUPTCY ¶ 101.05 (16th ed. 2020) (“By fashioning a single definition of “claim” in the
12 Code, Congress intended to adopt the broadest available definition of that term. The Supreme
13 Court has repeatedly reiterated this principle and has declined all invitations to exclude rights to
14 payment from the definition of claim.”) (footnotes omitted).

15 Under that broad definition, “criminal fines and restitution orders are ‘debts’ for purposes
16 of the Bankruptcy Code.” *In re Hardenberg*, 42 F.3d 986, 992 (6th Cir. 1994); *e.g.*, *In re*
17 *Hubbard*, 161 B.R. 173, 176 (Bankr. N.D. Tex. 1993) (“The United States’ right to payment
18 includes not only the \$10,000 fine in the criminal judgment, but also the statutory interest on that
19 judgment.”); *In re Gilliam*, 67 B.R. 83, 86 (“a criminal fine and court costs constitute debts”)
20 (Bankr. M.D. Tenn. 1986). Because a “debt” is defined to mean “liability on a claim,” 11 U.S.C.
21 § 101(12), criminal fines, penalties and assessments are “claims” within the meaning of the
22 Bankruptcy Code.³ The TCC’s tortuous effort to avoid this well-settled authority is nonsensical.

24 ² The Tort Claimants RSA (Ex. A, at 1) incorporates the definition of the term “Claim” from the
25 joint plan of reorganization filed by the Debtors on November 4, 2019, which has the same
definition as that provided in the current Plan. [Docket No. 4563 at § 1.23]

26 ³ As the Sixth Circuit observed, “[i]f Congress had believed that criminal fines were not ‘debts’
27 giving rise to ‘claims,’ it would have had no reason to except such obligations from discharge in
28 section 523(a)(7).” *Hardenberg*, 42 F.3d at 991; *see In re Brown*, 39 B.R. 820, 822 (Bankr. M.D.
Tenn. 1984) (“If the Bankruptcy Code said that only orders to pay money by civil courts are debts
for bankruptcy purposes, then credence could be given to the defendant’s argument that a criminal
court restitution order does not embody a ‘debt’ dischargeable in bankruptcy. However, nothing

1 The fines, penalties, and assessments payable under the Butte County Agreement
2 therefore would qualify even if the Plan and Tort Claimants RSA defined “Fire Claim” simply as
3 “any Claim against the Debtors in any way arising out of the Fires.” The Plan and Tort Claimants
4 RSA, however, are even more explicit, as they specifically list “fines or penalties” among the
5 types of obligations that are included, without limitation, in the definition of “Fire Claim.”
6 Plan § 1.78; Tort Claimants RSA, Ex. A at 2-3. This makes the point crystal clear.

7 **3.** In response, the TCC conspicuously, but not surprisingly, does not quote the
8 applicable contract and Plan language to which it agreed or confront the governing statute and
9 caselaw. The TCC instead argues that the definition of “Fire Claim” “includes only civil
10 restitution, fines and penalties” for two reasons. Objection at 3. First, with typically irrelevant
11 hyperbole, the TCC claims that it “is not aware of any situation in which a convicted criminal has
12 been allowed to force their victims to pay the criminal penalties imposed by the Court for
13 victimizing them.” *Id.* at 4. This is rhetorical foolishness. The Debtors are satisfying Fire Victim
14 Claims with consideration under the Plan of approximately \$13.5 billion. Under the Tort
15 Claimants RSA negotiated by the TCC, that sum is to satisfy *all* Fire Victim Claims, whether they
16 be civil or criminal in nature. If the TCC had wanted to limit agreed-upon Plan distributions to a
17 subset of Fire Victim Claims, the negotiated resolution would have differed from that embodied
18 in the Tort Claimants RSA and the Plan. But that, once again, is not the agreement that the TCC
19 negotiated and signed.

20 Next, the TCC says that “[t]he definition of ‘Fire Claim’ in the TCC RSA includes various
21 types of civil claims, both under statute and common law, and, with the exception of ‘punitive
22 and exemplary damages’ all are of a compensatory nature,” whereas “[c]riminal fines are of a
23 wholly different character.” *Id.* The TCC argues that, “in the context of a definition that
24 otherwise refers entirely to civil, compensatory awards, the term ‘fines or penalties’ can[not] be
25 properly construed as applying to criminal sanctions.” *Id.* at 5.

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in the Bankruptcy Code suggests that only civil courts enter orders to pay money that are subject
to discharge in bankruptcy.”).

1 This is both untrue and beside the point. As the TCC concedes, the Plan expressly
2 includes “fines or penalties” as examples of a “Fire Claim.” Fine and penalties are not
3 “compensatory.” They are penal. *Penalty*, Black’s Law Dictionary (11th ed. 2019) (“Punishment
4 imposed on a wrongdoer, usu. in the form of imprisonment or fine; esp., a sum of money exacted
5 as punishment for either a wrong to the state or a civil wrong (**as distinguished from**
6 **compensation for the injured party’s loss**).”) (emphasis added). Similarly, “declaratory and/or
7 injunctive relief” – also among the list of examples in the definition of “Fire Claim” – is not
8 compensatory.

9 In any event, the list of examples in the definition of “Fire Claim” is representative and
10 nonexclusive, preceded by “including, but not limited to.” The Plan specifically states, as a “rule
11 of construction,” that “the words ‘include’ and ‘including,’ and variations thereof, shall not be
12 deemed to be terms of limitation, and shall be deemed to be followed by the words ‘without
13 limitation.’” Plan at 36. The Plan also states that “the rules of construction contained in
14 section 102 of the Bankruptcy Code shall apply to the Plan.” *Id.* Section 102(3) of the
15 Bankruptcy Code provides that “‘includes’ and ‘including’ are not limiting.” 11 U.S.C § 102(3).

16 The TCC’s effort to invoke the rule of *ejusdem generis* thus fails on multiple grounds.
17 *Envtl. Prot. Info. Ctr. v. Carlson*, No. 19-CV-06643-EMC, ___ F. Supp. 3d ___, 2019 WL
18 6525683, *4 (N.D. Cal. Dec. 4 2019) (“*ejusdem generis* has far less, if any, force when the list of
19 examples follows the words ‘including, but not limited to’”).

20 4. Finally, the TCC’s continuing and utter disregard for its past actions, statements,
21 and agreements must be noted here. As the Court will recall, on October 17, 2019, the TCC and
22 the Ad Hoc Committee of Noteholders filed their own competing plan of reorganization. [Docket
23 No. 4257] The definition of “Fire Claim” in that plan was substantively *identical* to the definition
24 now in the Plan. *Id.* § 1.71. The TCC’s own plan – which it presumably understood and
25 endorsed – conspicuously included “fines or penalties” as examples of “Fire Claims” to be
26 channeled to the Fire Victim Trust and discharged. *Id.* It did not limit the definition of Fire
27 Claims to civil fines and penalties or otherwise exempt claims arising from criminal proceedings.
28

1 When settlement discussions between the TCC and the Shareholder Proponents began, the
2 TCC insisted that the Shareholder Proponents match each and every term of the TCC's
3 agreements with the Ad Hoc Noteholder Committee, including the definition of Fire Claims and
4 the scope of the class of claims to be channeled to the Fire Victim Trust. In the hard fought
5 negotiations that followed, the Debtors and Shareholders Proponents agreed to the TCC's demand
6 and adopted the TCC's formulation and definition of the claims to be satisfied by the Fire Victim
7 Trust.

8 The TCC bound itself to that formulation and definition in the Tort Claimants RSA. The
9 TCC's contrary arguments in the Objection are a breach of the Tort Claimants RSA and yet
10 another effort to recut the settlement. The Court should not countenance it.

11 Dated: April 10, 2020

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